

September 12, 2005

**OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON**

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REPORT AND DECISION

SUBJECT: Department of Development and Environmental Services File No. **E0400743**

ROBERT PATTON
Code Enforcement Appeal

Location: 30225 – 196th Avenue Southeast

Appellant: **Robert Patton**
30225 – 196th Avenue Southeast
Covington, Washington 98042
Telephone: (206) 371-8168

King County: Department of Development and Environmental Services,
represented by Jim Toole
900 Oakesdale Avenue Southwest
Renton, Washington 98055-1219
Telephone: (206) 296-7196
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SUMMARY OF DECISION/RECOMMENDATION:

Department's Preliminary Recommendation:	Deny appeal
Department's Final Recommendation:	Deny appeal; extend compliance dates
Examiner's Decision:	Grant appeal in part, deny in part; extend compliance dates

EXAMINER PROCEEDINGS:

Hearing Opened:	July 21, 2005
Hearing Closed:	July 21, 2005

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes.
A verbatim recording of the hearing is available in the office of the King County Hearing Examiner.

FINDINGS, CONCLUSIONS & DECISION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. On May 19, 2005, the King County Department of Development and Environmental Services (DDES) issued a Notice and Order to Robert and Barbara Patton that alleges code violations at property located at 30225 – 196th Avenue Southeast. The Notice and Order cites the property for violations by:
 1. An addition and remodel to a residence (including but not limited to the front deck over 30 inches in height, installation of windows in the lower floor, and a wood burning stove) without the required permits, inspections and approvals in violation of Sections 16.02.240 and 16.12.120 of the King County Code and Sections 105.1 and 113.1 of the 2003 International Building Code and Sections 106.1, 106.2, 801.7, 801.10.1, 801.10.02, 905.1, and 905.2 of the 2003 International Mechanical Code.
 2. Accumulation of inoperable vehicles and vehicle parts (including but not limited to heavy equipment, tires, transmissions, engines, batteries) throughout the premises of this residential site which is situated within an aquatic area buffer and within an area of potential wetland influence in violation of Sections 21A.32.230, 21A.24.325, 21A.24.358 and 23.10.040 of the King County Code. Parking/storage of vehicles on non-impervious (unimproved) surfaces in violation of Section 21A.18.110(I) of the King County Code.
 3. Accumulation of assorted rubbish, salvage and debris (including but not limited to metal drums, household goods, household furniture, appliances, bicycles, paint cans, lawn mowers, scrap metal, scrap wood, glass and plastic) throughout the premises of this residential site. The subject property is situated within an aquatic area buffer and within an area of potential wetland influence in violation of Section 21A.32.230, 21A.24.325 and 21A.24.358 of the King County Code and Section 307 of the 2003 International Property Maintenance Code.
 4. Placement of an animal pen (swine) along the south property line in violation of Section 21A.12.122(A) of the King County Code.
 5. Removal of trees within an aquatic area buffer in violation of Section 21A.24.045(21c) (sic¹) and 21A.24.325 of the King County Code.

The Notice and Order required that by July 19, 2005, a complete application be made for the required permits, inspections and approvals for the structural work to the residence noted as in violation; and that by June 20, 2005, the inoperable vehicles and vehicle parts; rubbish, salvage and debris; and the swine pen be removed/relocated and required to come into compliance. Timber cutting within “wetland” buffers was required to be ceased immediately, with permits required for restoration to be applied for by June 20, 2005.

¹ The correct citation is 21A.24.045(D)(21)(c).

2. Appellant Patton, owner of the property, filed a timely appeal of the Notice and Order. Other than stating that he had not violated the “wetland,” the appeal does not contest the violations charged by the Notice but requests additional time for compliance due to the Appellant’s restricted ability to perform the necessary tasks. The appeal also notes a cooperative approach with DDES to achieve compliance. Mr. Patton testified that the swine at issue had been removed from the site.
3. As noted, Appellant Patton claims in his appeal not to have performed any actions within a wetland. However, the charges in the Notice and Order are not of violations within “wetlands,” but of “accumulation of inoperable vehicles and vehicle parts...within an *aquatic area buffer* and within an *area of potential wetland influence*” (Charge 2); “accumulation of assorted rubbish, salvage and debris... within an *aquatic area buffer* and within an *area of potential wetland influence*” (Charge 3²); and “removal of trees within an *aquatic area buffer*” (Charge 5). (Emphases added)
4. Mr. Patton’s somewhat misdirected defense seems prompted at least in part because the Notice and Order misaddresses its Charge 5-related correction order to “immediately cease all cutting of timber within *wetland buffers*.” (Emphasis added) (The other related correction orders, for Charges 2 and 3, do not address themselves to the particular qualities of the violation setting.)
5. Also, in its testimony and documentary evidence (see, *e.g.*, the frontispiece of Exhibit 9), DDES almost exclusively used the terms “wetland” and “potential wetland” in support of the Notice and Order’s charges of “aquatic area buffer” and “area of potential wetland influence” violations. DDES never used the terms “aquatic area” or “aquatic area buffer” in its testimony to describe the areas of alleged violation and related the evidence to the charges in the Notice and Order. And the only exceptions in the documentary evidence are the mapping and legends on two county Geographic Information Systems (GIS) maps of the subject area (see pp. 1 and 2 of Exhibit 7), which depict a property-wide “water body” onsite (not evident in any of the other submitted evidence, including numerous aerial photographs), with a surrounding “aquatic areas buffer.” But the GIS maps are not shown to have any regulatory effect themselves (and also come with a notation regarding the lack of any warranty of accuracy). The GIS map depictions of “aquatic areas buffer” and “area of potential wetland influence” seem to serve only as informal initial screening-level alerts which would trigger a more detailed examination of a land area for actual aquatic and wetland resources.³
6. “Aquatic area” and “wetland” are expressly distinct from one another in the county’s critical areas ordinance, and are not interchangeable (see, *e.g.*, KCC 21A.06.072C: “Aquatic area: any nonwetland water feature...”; 21A.06.1391: “Wetland: an area that is not an aquatic area...”; and 21A.24.045(B)(4) and (5) *et seq.*).

² DDES may wish to review the sentence structure of Charge 3, which literally states that the *property*’s being situated within such areas is in violation of the code, obviously a scrivener’s error.

³ The only other evidence which may have intended to be directed to “aquatic areas” spoke to a couple of poorly or rather vaguely depicted water channels and a nearby offsite pond. But no specific identification of them as regulated “aquatic areas” was made in the evidence and testimony. They were all discussed cursorily in the presentation of asserted wetlands.

7. The terms “area of potential wetland influence” and “potential wetland” are not terms used in the code sections cited as having been violated (nor, based on a computer search of the net version of the code, anywhere else in county code), and have no regulatory effect.⁴
8. In summary with regard to aquatic area/wetland buffer violations purported to be addressed in this case, the Notice and Order and DDES’s presentation of the case at hearing are internally inconsistent and the Notice and Order is defective on its face. Accordingly, with regard to the alleged critical area violations it shall be reversed and dismissed without prejudice. Given the reversal of the Notice and Order on facial grounds regarding the alleged critical area violations, the Examiner need not address whether the evidence submitted into the record proves the allegations.
9. The other aspects of the charges of violation in the Notice and Order are found correct; the Appeal made no defense to them and was used mostly as a request for additional time to cooperatively achieve compliance. However, Charge 4 regarding the swine pens has been rendered moot by the Appellant’s removal of the swine.⁵

CONCLUSIONS:

1. Charges 1 and 4 of the Notice and Order are uncontested and shall be sustained as correct. Except with respect to critical area violation, Charges 2 and 3 of the Notice and Order are also uncontested and shall be sustained as correct. Given the fact that the appeal process has obviated the deadlines for compliance imposed in the Notice and Order with respect to those charges, the Examiner shall impose new deadlines for correction. No requirement is necessary with regard to Charge 4 since the swine have been removed and the matter is moot. The Notice and Order is defective on its face with respect to the critical area violation aspects of Charges 2 and 3 and the entirety of Charge 5 and its related correction requirement, and shall be reversed and dismissed without prejudice with respect to those portions. (The reversal does not lift the continuing obligation of the Appellant, as would pertain to any other property owner, to maintain compliance with critical area regulations. It only means that this particular Notice and Order is facially defective in that regard.)

DECISION:

The appeal is **DENIED** with respect to Charges 1 and 4 and the portions of Charges 2 and 3 addressing violations other than critical area violations as specified in Conclusion 1 above, except that the deadlines for regulatory compliance are revised and extended as stated in the following order. With respect to Charge 5 and the portions of Charges 2 and 3 regarding critical area violations as specified in Conclusion 1, the Notice and Order is reversed as defective on its face and **DISMISSED** without prejudice.

⁴ Other than in the Notice and Order and the DDES staff report and testimony, the terms “potential wetland” and “area of potential wetland influence” are found in the record only in the legend of one of the GIS maps of the subject area (see p. 2 of Exhibit 7).

⁵ DDES notes that the pens must now meet the standard structural setback requirements of the code. That is not a matter under the Examiner’s jurisdiction in this case, since violation of those regulations is not a subject of the Notice and Order at issue.

ORDER:

1. Apply for and obtain the required permits, inspections and approvals for the structural work addressed by Charge 1 of the Notice and Order, with a complete application to be submitted by **October 12, 2005**. Meet all deadlines for requested information associated with the permit and pick up the permit within the required deadlines. A pre-application meeting shall be arranged with DDES by *no later than* **September 30, 2005**.
2. Remove inoperable vehicles and vehicle parts from the premises or store these materials within a fully enclosed building and cease parking/storage of inoperable vehicles on non-impervious surfaces by *no later than* **October 31, 2005**. The Appellant and/or a representative and DDES shall engage in a progress discussion *on or around* **September 30, 2005**, to monitor progress and communicate any remaining impediments to obtaining full compliance by **October 31, 2005**.
3. Remove assorted rubbish, salvage and debris from the premises by *no later than* **October 31, 2005**.
4. No penalties shall be assessed against the Appellant or his property if the above conditions are met. If any of the deadlines stated in the above conditions are not met, DDES may assess penalties against the Appellant and the property retroactive to the date of this order.

ORDERED this 12th day of September, 2005.

Peter T. Donahue, Deputy
King County Hearing Examiner

TRANSMITTED this 12th day of September, 2005, via certified mail to the following:

Robert Patton
30225 – 196th Ave. SE
Covington, WA 98042

TRANSMITTED this 12th day of September, 2005, to the following parties and interested persons of record:

Robert Patton
30225 - 196th Ave. SE
Covington WA 98042

Suzanne Chan
DDES, Code Enf.
MS OAK-DE-0100

Elizabeth Deraitus
DDES/LUSD
MS OAK-DE-0100

Trudy Hintz
DDES/LUSD
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Lamar Reed
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Greg Sutton
DDES/LUSD
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Jim Toole
DDES, Code Enf.
MS OAK-DE-0100

NOTICE OF RIGHT TO APPEAL

Pursuant to Chapter 20.24, King County Code, the King County Council has directed that the Examiner make the final decision on behalf of the County regarding code enforcement appeals. The Examiner's decision shall be final and conclusive unless proceedings for review of the decision are properly commenced in Superior Court within twenty-one (21) days of issuance of the Examiner's decision. (The Land Use Petition Act defines the date on which a land use decision is issued by the Hearing Examiner as three days after a written decision is mailed.)

MINUTES OF THE JULY 21, 2005, PUBLIC HEARING ON DEPARTMENT OF DEVELOPMENT AND ENVIRONMENTAL SERVICES FILE NO. E0400743.

Peter T. Donahue was the Hearing Examiner in this matter. Participating in the hearing were Jim Toole, Sheryl Lux and Greg Sutton, representing the Department; and the Appellant, Robert Patton.

The following Exhibits were offered and entered into the record:

- Exhibit No. 1 DDES staff report for July 21, 2005
- Exhibit No. 2 Copy of Notice and Order issued May 19, 2005
- Exhibit No. 3 Copy of Notice and Statement of Appeal received June 2, 2005
- Exhibit No. 4 Copies of codes cited in the Notice and Order
- Exhibit No. 5 Copy of letter from Washington State Patrol dated 9/15/04 re: illegal wrecking
- Exhibit No. 6 Copy of Sensitive Areas Notice on Title, dated 3/19/02
- Exhibit No. 7 Copy of area map; area map with special overlays; and 1996, 1998, 2000 and 2002 aerial photos of the subject property
- Exhibit No. 8 Photographs from the King County Assessor's office of the single-family residence on the subject property
- Exhibit No. 9 Photographs (color copies, 22 pages) of the subject property showing potential wetlands and their associated buffers, taken March 7, 2005, with 2 aerial photos showing location of photographs
- Exhibit No. 10 Photographs (color copies, 2 pages) of the subject property taken for case no. E0201169
- Exhibit No. 11 Photographs (color copies) of subject property taken on September 1, 2004, (20 pages); and March 7, 2005 (38 pages)
- Exhibit No. 12 Printout regarding DDES file no. E03G0036 with attached letters dated 2/04/03 and 2/13/04
- Exhibit No. 13 Photographs (2 color copies) of subject property